

# In the Supreme Court of the United States

OCTOBER TERM, 1965

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No. 27

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F. J. GUNTHER,

*Petitioner,*

VS.

SAN DIEGO & ARIZONA EASTERN RAILWAY  
COMPANY,

*Respondent.*

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On Writ of Certiorari to the United States Court of Appeals  
for the Ninth Circuit

## Objection to Motion for Leave to File Brief Amicus Curiae

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The Respondent San Diego & Arizona Eastern Railway Company respectfully submits its objection to the Motion by the Railway Labor Executives' Association (hereinafter referred to as Association) for leave to file a brief as amicus curiae in the above-entitled action upon the following grounds:

1. The interest of Association, as disclosed in the motion, is no more than a remote interest in the issue actually involved in this litigation. The case at bar involves the ques-

tion whether the National Railroad Adjustment Board (hereinafter referred to as Board) exceeded its jurisdiction in establishing a new grievance procedure (Medical arbitration panel) to which the parties to the collective bargaining agreement must appeal. Association would utilize this case as a vehicle to inject an entirely new issue over whether the decisions of the Board are final and binding except for money awards.

2. The issue which Association seeks to discuss in its brief *amicus curiae* is completely foreign to the issue now before this Court. The burden of Association's argument is that the decisions of the Board should not be reviewed by courts because it views the Board as a board of arbitration similar to those in the non-railroad field where arbitration is a matter of agreement between the parties and not a part of the statutory procedure for resolving contractual questions. This question is not present in this case. The issue here is whether the Board exceeded its jurisdiction. Association cannot and does not argue that the decision of any board of arbitration may not be reviewed by the courts where the board acted without jurisdiction.

3. For more than four months prior to filing its motion, counsel for Association has known (by virtue of a letter from Respondent's counsel dated May 17, 1965) that the Respondent withholds consent to the filing of a brief *amicus curiae* by Association. Meanwhile, Respondent's counsel has received Petitioner's brief and has been proceeding with the preparation of the Respondent's brief. Under all the circumstances, it is submitted that the delay in the submission of Association's motion is an additional reason why it should be denied.

**CONCLUSION**

For each and all of the foregoing reasons, Association's motion should be denied.

Dated: October 5, 1965.

Respectfully submitted,

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San Diego & Arizona  
Eastern Railway  
Company*